

Capital punishment should go, says APCLC leader

From Santosh Patnaik

Visakhapatnam, Jan. 16: Dr K. Balagopal, general secretary of the Andhra Pradesh Civil Liberties Committee, has expressed the Committee's determination to carry on its struggle for the abolition of death penalty and preservation of human rights in the State and the country. He also strongly felt that the State government should initiate a dialogue with the People's War Group to woo the Naxalites without any preconditions because they have a sizeable social base among the poor in the Telangana region. The government should realistically accept this and invite the PWG for a constructive dialogue rather than going by the opinion of the police officers, he added.

The APCLC leader spoke to this reporter when the former arrived here recently to address a meeting against death penalty. Following are the excerpts from the interview.

Why are the human rights activists up in arms against capital punishment in Andhra Pradesh?

It is part of the agenda of human rights organisations all over the world. All human rights organisations advocate the abolition of death penalty in principle. When the United Nations drafted the International Covenant on Civil and Political Rights in 1966, one of the points incorporated in the draft was that death penalty should be abolished. But that was not agreeable to many countries. So the relevant provision now reads that death sentence should be awarded only in rare cases, and that provision for an application for pardon should be available in all cases.

The Supreme Court ruled in 1985 in the Bachan Singh case that the

of India case that capital punishment should be awarded only in 'rarest of rare' cases. How do you interpret 'rarest of the rare'?

The Supreme Court has till now not laid down any criterion for deciding whether a given case falls in the category of 'rarest of rare.' The courts are interpreting it case by case. In the case of Billa and Ranga, the criterion was that they had murdered helpless and innocent children. In the case of Indira Gandhi's murderers, the reason was that they had conspired and killed the Prime Minister of the country. The former may seem reasonable, but the latter is not. But even in the former case, if the children killed by Billa and Ranga had been slum-dwellers rather than upper middle class kids, would the court have reacted in the same way? We feel that if at all hanging is to be there, and is to be resorted to in the 'rarest of rare' cases, the criterion should be free from social and political prejudices.

What punishment do you think should be given to those who perpetuate unpardonable offences?

It is a question that is still being debated. What is the purpose of giving punishments? One popular answer is that it deters other people from committing crimes. But research has shown that the deterrent effect of punishments is negligible. Moreover, it seems unfair that one person is punished so that others may be prevented from committing crimes. How is this person answerable or responsible for the crimes that others may commit in future? The other answer usually given is that if crimes go unpunished, the moral outrage that society feels at the commission of a crime remains unassuaged. To

assuage or answer this moral outrage, crimes must be punished. But this 'moral outrage' appears to be nothing short of a collective desire for revenge. We put ourselves in the shoes of the crime's victim, and collectively seek revenge. But when we consider that private revenge as the sanction of penal law is regarded as uncivilised and unacceptable in modern societies, is this collective revenge acceptable? Does it cease to be uncivilised merely because it is clothed in the expression 'moral outrage'? This is an ongoing debate. There are no easy answers. But when we seek punishment for what you have called 'unpardonable offences,' we should be clearly aware whether we are seeking revenge or justice. That is the cardinal distinction.

Can you explain why you are totally opposed to death penalty?

Death penalty is a 'tit for tat' punishment. It says: "Because you have killed, you must die." Such a logic was characteristic of punishments in a stage of history in which punishment was nothing but revenge. But once we start looking at punishments not from the point of view of revenge but of justice, this tit for tat logic loses its legitimacy. Today a person who is convicted of setting fire to somebody else's house is not punished by having his own house set on fire. He is sent to jail or fined. A person who kidnaps somebody else's child is not deprived of his own child. Why, then, should an exception be made in the case of murder? Why should the last vestiges of the 'tit for tat' logic of punishment be retained in the form of death penalty?

There is a more important reason. For every crime that is committed, society carries some responsibility,

as well as the individual who has committed it. Society has created the conditions that impel or motivate the person to commit crime. It is, therefore, partly responsible for it, along with the individual who has intentionally taken the decision to commit the offence. Punishment, therefore, should not hold the individual fully responsible for the crime. This is precisely what death penalty does. It holds the murderer 100 per cent responsible for the murder.

Your petition for condoning the death sentence of Chalapati Rao and Vijayvardhana Rao, who have been convicted for burning to death 23 passengers in a bus at Chilakaluripet has been rejected by Governor Krishan Kant. Is he empowered to condone a person waiting for the gallows?

He is empowered under Article 161 of the Constitution of India. The President is empowered under Article 72. Another petition is pending now before the President of India.

We have also filed a writ petition challenging the fairness of the trial of the two convicts. They did not have a lawyer in the pre-trial stage. A judgement of the Supreme Court given by Justice Bhagwati in a Bihar case says that "legal aid from the moment a person is first produced in court is a fundamental right, and is part and parcel of fair procedure."

There are some civil liberties activists who feel that the court judgements are prejudicial if an accused happens to be a dalit. What is your view?

Nobody is beyond mistakes and prejudices. Just as mistakes in judicial pronouncements can stem from logical interpretative error,

judgements can also be affected by social prejudices and the worldview of the judge, which may well be affected by the caste of the person.

However, we are opposed to the death penalty in principle, irrespective of the caste of the condemned person. We will also fight for the accused in the Tsundur massacre of dalits, who are all from forward castes, in case they are condemned to death, which is however quite unlikely.

What is your action plan to achieve your objective?

As far as the Chilakaluripeta case is concerned, I have already said that a mercy petition is pending before the President and a writ petition in the Supreme Court. In the meanwhile, we are undertaking a campaign to educate the people about this case, as well as death penalty in general. After all, 55 countries have completely abolished death penalty. That includes also some third world countries and not merely the developed nations. And there are 37 countries where death penalty is not being imposed for several decades, though it is on the statute books.

Coming to spurt in violence perpetuated by the People's War Group, do you think that there can be any end to the so-called armed struggle by the 'Annalu'?

Whether there can be an end or not, there has to be a political dialogue between the government and the PWG.

You know it very well that the government's contention is that they are prepared for a dialogue if the Naxalites gave up the path of violence and join the mainstream?

That does not make any sense. A pre-condition for a dialogue cannot be that the other side gives up its

position. The problem that the government faces stems from the fact that the Naxalites have taken up arms for what they believe to be a just cause. On their part, the Naxalites say that their taking up arms is not the real problem, but the real problem is people's poverty and oppression to which their weapons are the solution. It is these two mutually opposing stands that must form the starting point of a dialogue.

But don't you think that late N T Rama Rao took the lead by lifting the ban and calling them to join the mainstream?

Lifting the ban is a necessary pre-condition. But N T R did not initiate any political moves for a dialogue. If the move is initiated and if the Naxalites respond, then the APCLC is also prepared to help the process of a dialogue.

It is said that the Naxal base is on the wane in Telangana. We are seeing reports in the Press that daily Naxalites are being attacked by the villagers?

We are not concerned whether it is waxing or waning. We do not hold any brief for the Naxalites or their violent activities. But we insist that society and the State must understand the phenomenon realistically and deal with it democratically. And the reality is that the Naxalites do have a substantial base in society. This is acknowledged even by the local MLAs and MPs of the ruling parties. This is not to say that all people are behind them or that all people are happy with all that they are doing. But they do have a sizeable social base among the poor in Telangana. The government should realistically accept this instead of going by the opinions of its police officers.